

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.38507 of 2002

1. John Thomas
2. Mrs.Kunjamma Varghese
rep. by their Power Agent
Mr.C.S.Ramaswamy .. Petitioners
vs.

1. The Government of Tamil Nadu,
rep. by Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.
2. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk, Chennai - 5.
3. Assistant Commissioner/Competent
Authority, Urban Land Ceiling,
Coimbatore. ... Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the third respondent, especially, the orders, dated 28.8.1992 vide Ref.Na.Ka.651/92/A2, 7.12.1992 under Ref.No.651/92/B2 and 23.4.1998 vide Ref.651/92/B3, under Sections 9(5), 10 (1) and 11 (5) respectively, and quash the same and treat the proceedings in respect of land in Survey No.259/3B Kuniamuthur Village, Coimbatore, as abated in view of Section 4 of Act 20 of 1999.

For petitioner : Mr.V.Ramesh
For respondents : Mr.C.Thirumaran
Government Advocate

O R D E R

This writ petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the third respondent, especially, the orders, dated 28.8.1992 vide Ref.Na.Ka.651/92/A2, 7.12.1992, under Ref.No.651/92/B2 and 23.4.1998 vide Ref.651/92/B3, under Section 9(5), 10 (1) and 11 (5) respectively, and quash the same and treat the proceedings in respect of land in Survey No.259/3B Kuniamuthur Village, Coimbatore, as abated in view of Section 4 of Act 20 of 1999.

The brief facts of the case, as stated in the affidavit filed on behalf of the petitioners by their power agent, are as follows:

2. The first petitioner and his wife Annie John were the owners of the property comprised in Survey No.259/3B, Kuniamuthur Village, Coimbatore, measuring about 1.35 acres, having purchased the same by a registered sale deed, dated 4.4.1983. The property purchased was purely an agricultural land at the time of purchase and even thereafter. The petitioners have been in possession and enjoyment of the above mentioned land and agricultural operations were being carried on by them. One of the purchasers, namely, Annie John settled her portion of the land in favour of Kunjamma Varghese, the second petitioner herein, by a settlement deed, dated 7.8.1985. Thereby, the second petitioner herein had become the absolute owner of the agricultural land, as mentioned above, measuring about 67.5 cents.

3. It is further stated that while so, proceedings had been initiated, under Act 24 of 1978, and orders under Sections 9(5), 10 (1) and 11 (5) were passed by the third respondent. However, none of the notices and orders, as contemplated under the provisions of the Act, were properly served or communicated to the petitioners. On coming to learn of such proceedings initiated by the third respondent, the petitioners had filed an appeal in the month of August 1998, under Section 33 of Act 24 of 1978. The second respondent had taken the appeal on file and had sent hearing notices. One of the hearings had been fixed, on 25.6.1999, but by then Act 24 of 1978 had been repealed, with effect from 16.6.1999, by Act 20 of 1999. Since the appeal preferred by the petitioners was not taken up for hearing, the petitioners were constrained to issue a legal notice, dated 10.9.2002, and the petitioners were informed that the appeal would not be taken up for further hearing, since Act 24 of 1978 had been repealed.

4. The petitioners have further stated that the appeal filed, under Section 33 of Act 24 of 1978, is in exercise of a vested right and such right could not be taken away by Act 20 of 1999. Under Section 33 of Act 24 of 1978, the second respondent is vested with the power to dispose of the appeal, notwithstanding the repeal of the Parent Act. In spite of the petitioners bringing to the notice of the second respondent regarding the pendency of the appeal, no steps had been taken by the second respondent to dispose of the appeal. Therefore, the petitioners have preferred the present writ petition.

5. It has been further stated by the petitioners that under Section 4 of Act 20 of 1999, all proceedings pending on the file of the Court, Tribunal, or any authority shall abate. Admittedly, the appeal has been pending before the second respondent, when Act 20 of 1999 came into force. Therefore, the second respondent ought to have declared that the said appeal had abated, by virtue of Section 4 of Act 20 of 1999. However, no such orders had been passed by the second respondent.

6. The petitioners had further stated that even assuming that

a notice, under Section 11(5), had been served on the petitioners by the third respondent, in accordance with the procedure established by law and if possession of the land in question, had not been voluntarily handed over by the petitioners, the third respondent ought to have proceeded in accordance with Section 11 (6) of the Act, invoking the procedure provided in law. The claim made by the respondents that they have taken possession of the land in question, from the petitioners, especially, in the absence of a memorandum of panchnama cannot be validly sustained, in view of the decisions rendered by this Court as well as the Supreme Court of India.

7. It has been further stated that the land was agricultural land and the petitioners had filed an application for exemption, for converting the agricultural land into layout, for the approval of the local Authority. The layout was duly approved, vide L.P/R (CPN) No.116/85. Since the land holding of the petitioners was within the limits prescribed, the third respondent had given a clearance for the layout in the year 1984 and the layout had also been approved. It is also to be noted that an approved layout will be outside the purview of Act 24 of 1978, in accordance with Section 5(3) of the Act. Thereafter, the petitioners had sold the lands by way of sale deeds, dated 9.11.1999 and 29.3.2000.

8. It has been further stated by the petitioners that notice under Section 9(4) together with draft statement under Section 9 (1) had not been properly served on the petitioners. None of the orders passed by the third respondent have been served on the petitioners. The petitioners were not aware of the acquisition proceedings till the notice under Section 11(5) was received by them. The Non-service of notice under the various provisions of the Act and non-service of the orders on the petitioners under Section 9(5), vitiates the acquisition proceedings. Admittedly, the notice under Section 9(4), together with the draft statement under Section 9(1), had been served only by affixture, and affixture is not the proper mode of service, as contemplated under the procedure established by law. Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules stipulates service of notice by registered post, with acknowledgement due, on the last known address. This procedure, as contemplated under Rule 8 has not been followed by the third respondent. Further, no personal hearing was afforded to the petitioners before passing of the order of acquisition under Section 9(5), even though such personal hearing is of a mandatory character.

9. The respondents have filed a counter-affidavit, dated 5.4.2005, in which it has been stated that on 30.1.1992, the Special Deputy Tahsildar (Urban Land Tax) Coimbatore, had filed a report stating that one John Thomas, son of Thomas and Anna Thomas, W/o. John Thomas were holding an extent of 24 grounds 1206 sq. ft. or 5463 sq.mts. of urban land in S.No.259/3 of Kuniamuthur Village, Coimbatore Urban Agglomeration, which was in excess of the limit allowable under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Since they have failed to file the return, required under Section 7 of the Act, a notice under Section 7(2)

of the Act was issued, on 7.4.1992 and as the urban land owner had refused to receive the notice, it had been served by affixture, on 9.5.1992. Since the urban land owner did not respond to the 7(2) notice, draft statement under Section 9(1) with notice under Section 9(4) was issued, on 25.6.1992, determining an extent of 2463 sq.mts., as excess vacant land dully allowing 3000 sq.mts. of vacant land as entitlement out of the total extent of 5463 sq.mts. of the urban land. The urban land owner had refused to receive the said notice and hence it was served by affixture, on 17.7.1992.

10.It has been further stated that as it is mandatory to inspect the land before the issue of order under Section 9(5) of the Act, the Assistant Commissioner, Urban Land Tax, Coimbatore, had inspected the land, on 26.8.1992, and during inspection it was found that the entire land was well laid out as sites and it was found to be a pucca urban land. Thereafter, the order under Section 9(5) of the Act was issued, on 28.8.1992, and it was served by way of affixture, on 16.10.1992, duly witnessed by the village Administrative Officer, Kuniamuthur.

11.The final statement under Section 10(1) was issued, on 7.12.1992, and had been served by way of affixture, on 22.12.1992. The Notification, dated 30.4.1996, under Section 11(1) of the Act, was published in the Tamil Nadu Government Gazette, on 29.5.1996, and a Notification, dated 28.7.1997, under Section 11(3) of the Act was published in the Tamil Nadu Government Gazette, on 20.8.1997. The errata was published in the Tamil Nadu Government Gazette, on 7.1.1998.

12.It is further stated that the notice under Section 11(5) of the Act had been issued, on 23.4.1998 and sent to the urban land owner, by registered post with acknowledgement due, and the same was returned with postal remarks as "not claimed". Hence, the notice was sent for service through the Field Assistant in the third respondent's Office and the said notice was received by the person available in the house, on 28.7.1998. On expiry of the statutory period, the excess vacant land measuring 2450 sq.mts., in S.F.No.259/3B of Kuniamuthur Village, was acquired from the urban land owner and the acquired land was handed over to the Revenue Inspector, Perur Firka, who was representing the Tahsildar, on 14.9.1998.

13.It has been further submitted that after receipt of the notice under Section 11(5) of the Act, the urban land owner had filed an appeal, under Section 33 of the Act, before the Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax, Chennai, on 5.11.1998 and the remarks on the petition was submitted, on 3.12.1998, vide RC.No.651/92/A3, dated 3.12.1998. Pending decision on the appeal, the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, (Tamil Nadu Act 20 of 1999) came into force with effect from 16.6.1999.

14.The learned counsel for the petitioner Mr.V.Ramesh, relied

on an earlier decision of this Court in SOSAMMA THAMPY Vs. THE ASSISTANT COMMISSIONER (ULT)-CUM-COMPETENT AUTHORITY (ULC) & ANOTHER, (2006-3-L.W.50), to support his contentions. He had also cited a recent decision of a learned single Judge of this Court, dated 19.8.2006, made in W.P.No.21141 of 2004, wherein, it has been held as follows:

"The writ petitioners are the land owners. Proceedings under the Tamil Nadu Urban Land Ceilings Act were initiated declaring the holdings of the petitioners as surplus. Their challenge to those proceedings had come to an end against them. But however, the said Act came to be repealed by Act 20 of 1999, which came into force with effect from 16.6.1999. There is a saving clause in the Repealing Act, namely, Section 4. Under that Section, if, prior to the passing of the Repealing Act, possession of the land declared to be surplus in the hands of the owner had been taken, then, such possession would not revert back to the land owner. There is a long line of decisions to say that unless, pursuant to the earlier declaration, physical possession of land had been taken, the proceeding initiated under the old Act would come to an end. Therefore, the question in this case is whether the competent authority under the Tamil Nadu Urban Land Ceiling Act had taken physical possession of the property in question. Learned Government Advocate relies upon a communication stated to have been written by the Revenue Inspector, Ambattur to the Revenue Inspector, Poonamallee stating that the land owners had already handed over possession. Admittedly, the land owners had not signed in that letter evidencing transfer of possession of land to the Government. Except this letter, learned Government Advocate is not in a position to bring to the notice of this court any other legal material, which would show that Government had taken physical possession of the lands in question. Therefore, following the long line of decisions and holding that physical possession of lands had not been taken pursuant to the earlier declaration, this writ petition stands allowed as prayed for."

15. Further, the learned counsel appearing on behalf of the petitioners has relied on the following decisions :-

15.1. In M/s.Vijay Foundation (P) Ltd. Rep. by its Director, R.Thiagarajan Vs The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai, reported in 2006-4-L.W,159, a learned Judge of this Court, while dealing with the action

initiated by the respondents under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999), has held that the respondents had initiated acquisition proceedings against the person who was not the owner of the lands. As the mandatory conditions mentioned in Sections 7 to 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, were not followed by the respondents the alleged possession taken by the respondents was vitiated. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents. Since the possession of the land is with the petitioner ever since the date of purchase and as the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was repealed on 16.06.1999; it was not open to the respondents to proceed against the petitioner."

15.2. In *Sosamma Thampy Vs. The Assistant Commissioner (ULT)-CUM-Competent Authority (ULC) & Another* (2006-3-L.W.50), *M/s.Anees Leathers Manufacturers rep.by its proprietor Mr.Anees Ahamed Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others*, reported in 2006-3-L.W.437, and *Jayaseelan & Ratnaseelan Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others* reported in 2006-3-L.W.440, this Court while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling Repeal Act (Act 20 of 1999) on the land acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation), Act 1978, has held that all such proceedings initiated under the Act of 1978, would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999, if the possession of the land had not been taken by the authorities concerned prior to the repeal and if due compensation has not been paid to the petitioners.

16. Per contra, the learned Government Advocate Mr.C.Thirumaran, appearing on behalf of the respondents had relied on a decision of the Supreme Court in *STATE OF TAMIL NADU AND ANOTHER Vs. MAHALAKSHMI AMMAL AND OTHERS*, (1996) 7 SCC 269). In the said case, the Supreme Court had dealt with the provisions of the Land Acquisition Act, 1894, and the procedure followed by the authorities thereunder and it was not with regard to an action arising under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, and the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

17.Further, the learned Government Advocate had produced the original file (R.Dis.651/92, dated 7.11.2000) before this Court. The possession certificate therein shows that the Special Deputy Tahsildar Urban Land Tax, Coimbatore (S), had handed over the lands in SF.No.259/3 B, to an extent of 2450 sq.mts., in Kuniyamuthur village, Coimbatore District, to the Revenue Inspector, Perur Firka, on 14.9.1998. However, there is nothing on record to show that there was actual taking over of the physical possession by the concerned authority from the petitioners, in accordance with the procedure established under Section 11(6) of

the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978. Further, no records have been made available before this Court to show that the petitioners had voluntarily surrendered the excess land, under Section 11(5) of the Act, nor is there anything to show that compensation had been given to the petitioners, in view of the acquisition proceedings. On the other hand, it has been admitted, in paragraph 8 of the counter affidavit, filed on behalf of the respondents, that the appeal preferred by the petitioners, under Section 33 of the Tamil Nadu Act 24 of 1978, had not been disposed of due to the coming into force of Act 20 of 1999.

18. Based on the above decisions and on the submissions made by the learned counsels appearing for the petitioners as well as the respondents and on a perusal of the records available before this Court, it is clear that the repeal Act 20 of 1999 had come into force, on 16.6.1999. On the said date the appeal has been preferred by the petitioners under Section 33 of Act 24 of 1978, and it had been pending. The land acquisition proceedings initiated by the respondents and challenged before this Court cannot be sustained in view of the subsequent coming into force of repeal Act (Act 20 of 1999). In such circumstances, the proceedings initiated against the lands in question stands abated in view of Section 4 of Act 20 of 1999 and therefore, the writ petition stands allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai - 9.
2. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk, Chennai - 5.
3. Assistant Commissioner/Competent
Authority, Urban Land Ceiling,
Coimbatore.

2 ccs to M/s. V. Ramesh, Sr. 5796, 5013
1 cc to the Government Pleader, Sr. 5512